STATE OF MICHIGAN

COURT OF APPEALS

STANLEY ARNOLD MITCHELL,

Plaintiff-Appellant,

v

PREMIUM PROPERTIES INVESTMENTS LIMITED PARTNERSHIP, d/b/a/ QUALITY INN,

Defendant-Appellee.

UNPUBLISHED
October 4, 2005

No. 253847
Roscommon Circuit Court
LC No. 02-723554-NO

Before: Brian K. Zahra, P.J., and Mark J. Cavanagh and Donald S. Owens, JJ

ZAHRA, P.J. (*dissenting*).

I respectfully dissent. I conclude plaintiff is barred from recovery by the open and obvious danger doctrine. I would affirm.

The facts of this case are virtually indistinguishable from the facts in *Kenny v Katz Funeral Home Inc*., 472 Mich 929; 697 NW2d 526 (2005); reversing by summary order 264 Mich App 99; 697 NW2d 526 (2004). In *Kenny*, our Supreme Court concluded that black ice is an open and obvious condition. In *Lugo v Ameritech Corp., Inc*, 464 Mich 512; 629 N.W.2d 384 (2001), our Supreme Court held that "only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Id* at 519. Here, plaintiff did not show that he was forced to cross over the icy parking lot in order to avoid some other harm. Plaintiff also did not show that the ice posed a high severity of harm or death. By salting a portion of the parking lot in question, defendant took remedial measures to reduce the risks that typically exist in Michigan winters. Given these facts, I conclude the ice on which plaintiff was injured was open and obvious. Plaintiff did not show that the ice posed a risk so hazardous as to rise to the level of removing it from the open and obvious doctrine. I would affirm the judgment of the trial court.

/s/ Brian K. Zahra